

SENATE BILL 3159
By Kilby

AN ACT to amend Tennessee Code Annotated, Title 28; Title 34; Title 38; Title 39 and Title 40, relative to the continuous satellite monitoring of serious and violent sex offenders and linkage with crime incident information. This act makes appropriations for the serious and violent sexual offender monitoring program for the fiscal year beginning July 1, 2004.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act shall be known and may be cited as the "Tennessee Serious and Violent Sex Offender Monitoring Act".

SECTION 2. The general assembly hereby finds and declares the following:

(a) The United States department of justice has published confirmed statistics that over sixty percent (60%) of serious and violent sex offenders in state prisons have a prior conviction history and that the number of prisoners convicted for violent sexual assault has increased by an annual percentage of fifteen percent (15%) each year since 1980;

(b) Criminals who commit serious and violent sexual crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community;

(c) Intensive supervision of serious and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community;

(d) Mature technological solutions now exist to provide improved supervision and behavioral control of serious and violent sex offenders following their release;

(e) These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly-updated geographic location of supervised serious and violent sexual offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

(f) Continuous twenty-four (24) hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation; who have failed to register as a sexual offender as required by law; or who have been released from incarceration while they remain under the active supervision of the department of correction, the board of probation and parole, or other state and local agencies.

SECTION 3. Tennessee Code Annotated, Section 40-28-201(a), is amended by renumbering subdivision (2) thereof as subdivision (3) and by inserting a new subdivision (2) as follows:

(2) In addition to the other charges and fees imposed by this section, any person who is under the jurisdiction and supervision of the board and is enrolled in a location tracking and crime correlation based monitoring and supervision program as described in § 40-39-202, shall be required to contribute such funds as the board by regulation deems necessary and reasonable to cover the applicable costs of said program, consistent with § 40-39-205. The provisions of this subdivision (a)(2) shall also apply to any probationer or parolee for violation of a serious or sexually violent offense, as defined in § 40-39-201, transferred to the state of Tennessee from another state under the supervision of the interstate compact for the supervision of probationers or parolees, compiled as part 4 of this chapter.

SECTION 4. Tennessee Code Annotated, Section 40-35-104, is amended by adding the following subsection(f):

(f) In any case where a defendant is convicted of a sexual offense, and in

particular any serious sexual offense as enumerated in § 40-39-201(c), and is otherwise eligible for the application of an alternative sentence pursuant to this chapter, the court is specifically directed to consider requiring the defendant to enroll in the location tracking and crime correlation based monitoring and supervision program described in § 40-39-202, consistent with the interests of justice.

SECTION 5. Tennessee Code Annotated, Section 40-39-108, is amended by adding a subdivision (c), to read:

(c) Any knowing violation of this section shall result in the imposition of a mandatory sentencing condition of participation in a location tracking and crime correlation based monitoring and supervision program as described in § 40-39-202.

SECTION 6. Tennessee Code Annotated, Title 40, Chapter 39, is amended by adding the following new part 2:

Section 40-39-201. As used in this part, unless the context otherwise requires:

(a) "Serious sexual offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any sexual offense, as defined in subdivision (b) of this section or § 40-39-102(5), or any such person who is convicted in any other jurisdiction of any offense which would constitute a serious sexual offense in Tennessee. "Serious sexual offender" also includes any person who has been released on probation or parole following a conviction for any serious sexual offense, as defined herein, to the extent that such person continues to be subject to active supervision by the board of probation and parole as defined in law.

(b) "Serious sexual offense" means any of the crimes enumerated in § 40-39-102(5), including specifically:

- (1) The commission of any act that constitutes the criminal offense of:
 - (i) Aggravated rape, under § 39-13-502;
 - (ii) Rape, under § 39-13-503;
 - (iii) Aggravated sexual battery, under § 39-13-504;
 - (iv) Sexual battery, under § 39-13-505;
 - (v) Statutory rape, under § 39-13-506;

- (vi) Sexual exploitation of a minor, under § 39-17-1003;
- (vii) Aggravated sexual exploitation of a minor, under § 39-17-1004;
- (viii) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;
- (ix) Incest, under § 39-15-302;
- (x) Rape of a child, under § 39-13-522;
- (xi) Sexual battery by an authority figure, under § 39-13-527;
- (xii) Solicitation of a minor, under § 39-13-528;

(2) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (b); or

(3) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (b).

(c) "Violent sexual offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any sexually violent offense, as defined in subdivision (d) of this section or as defined in § 40-39-102(6), or any such person who is convicted in any other jurisdiction of any offense which would constitute a sexually violent offense in Tennessee. "Violent sexual offender" also includes any person who has been released on probation or parole following a conviction for any sexually violent offense, to the extent that such person continues to be subject to active supervision by the board of probation and parole as defined in law.

(d) "Violent sexual offense" and "Sexually violent offense" as used in this chapter means any of the crimes enumerated in § 40-39-102(6), including specifically;

- (1) The commission of any act that constitutes the criminal offense of:
 - (i) Aggravated rape, under § 39-13-502;
 - (ii) Rape, under § 39-13-503;
 - (iii) Aggravated sexual battery, under § 39-13-504;

(iv) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(v) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(vi) Rape of a child, under § 39-13-522;

(vii) Any other offense which requires lifetime supervision under § 39-13-524;

(2) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (d); or

(3) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (d).

Section 40-39-202.

(a) The commissioner of correction and the board of probation and parole are authorized to jointly establish a serious and violent sexual offender monitoring program within the department of corrections, and to promulgate rules and regulations governing it, consistent with the provisions of this chapter.

(b) The department shall carry out the following duties:

(1) By August 1, 2004, in consultation with the board of parole and all participating state and local law enforcement agencies, the department shall develop implementing rules, guidelines, and procedures for the continuous satellite-based monitoring of serious and violent sexual offenders. Such a system shall provide, at a minimum:

(A) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(B) Reporting of subject's violations of prescriptive and proscriptive schedule/location requirements. Frequency of reporting may

range from once a day (passive) to near real-time (active).

(C) An automated system that provides local and state law enforcement agencies and correctional agencies with an electronic alert when a comparison of the geographic positions of monitored subjects with reported crime incidents reveals that the subject was at or near such reported crime incidents. These alerts will enable authorities to include or exclude monitored subjects from an ongoing investigation.

(2) Prior to September 1, 2004, the department shall contract with a single vendor for the installation of the hardware, browser-based software, and integration services needed to monitor subject offenders and correlate their movements to reported crime incidents using a system meeting the requirements described in (b)(1)(A) and (B), and which also meets the data-integration and criminal incident correlation services described in (b)(1)(C).

(3) The department, in consultation with the board of probation and parole, shall develop a plan for the receipt and allocation of moneys deposited in the sexual offender monitoring and supervision program fund created pursuant to § 40-39-205 of this act to accomplish the purposes defined in this section. Subject fees collected under subsection (b) of § 40-39-205 of this act shall offset participation costs incurred by the board of paroles in implementation of this program.

(4) On or before March 1, 2005, the department shall make a report to a joint meeting of the judiciary committees of the senate and the house of representatives regarding the implementation of this act, the standardized procedures developed pursuant to this act, and the results of the programs created by this act.

Section 40-39-203.

(a) Notwithstanding any other provision of law, the board of probation and parole shall require, as a mandatory condition of release for any person convicted of a sexually violent offense as defined in § 40-39-201(d), that every person so released under its

supervision be enrolled in a satellite-based monitoring program for the full extent of his or her term of probation, parole, or other community-supervised release, consistent with the requirements of § 40-39-202.

(b) Notwithstanding any other provision of law, the board of probation and parole may require, as a mandatory condition of release for any person convicted of a serious sexual offense as defined in § 40-39-201(c), that such person be enrolled in a satellite-based monitoring program for a time period to be determined by the board, up to the full extent of the subject's term of probation, parole, or other community-supervised release, consistent with the requirements of § 40-39-202.

(c) The board of probation and parole shall require, as a mandatory condition of release for any person convicted of a violation of § 40-39-108 or § 40-39-204, that every person so released under its supervision be enrolled in a satellite-based monitoring program for the full extent of his or her term of probation, parole, or other community-supervised release, consistent with the requirements of § 40-39-202.

(d) Each sexual offender sentenced by any court of this state for a sexually violent offense as defined in § 40-39-201(d) committed on or after the effective date of this section, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the department of correction, to submit upon their release to a location tracking and crime correlation based monitoring and supervision program consistent with § 40-39-202. A court may deviate from imposing such a requirement upon a finding that such an order is not in the interest of justice. The failure of a court to order a defendant to such a program shall not prevent the board of probation and parole from independently mandating participation pursuant to its authority under subdivision (a).

(e) Participation in a location tracking and crime correlation based monitoring and supervision program under this section shall conform to the participant payment requirements stated in § 40-39-204, and be based upon such person's ability to pay.

Section 40-39-204.

(a) Intentional tampering with, removal of, or vandalism to a device issued

pursuant to a location tracking and crime correlation based monitoring and supervision program described in § 40-39-202 by a person duly enrolled in said program is a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for this Class A misdemeanor offense is mandatory, and no person committing such offense shall be eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent violation under this section is a Class E felony. Additionally, if the person violating this section is on probation, parole, or any other alternative to incarceration, then said violation shall also constitute sufficient grounds for immediate revocation of probation, parole, or other alternative to incarceration. Any violation of this section shall result in the imposition of the mandatory sentencing condition specified in § 40-39-203(c).

(b) Any person who knowingly aids, abets, or assists a person duly enrolled in a location tracking and crime correlation based monitoring and supervision program described in § 40-39-202 to tamper with, remove, or vandalize a device issued pursuant to that program is guilty of a Class A misdemeanor.

Section 40-39-205.

(a) There is hereby created in the state treasury a sexual offender monitoring program fund which shall consist of moneys received by the state treasurer pursuant to the location tracking and crime correlation based monitoring and supervision program as described in § 40-39-202. All interest derived from the deposit and investment of this fund shall be credited to the general fund. Any moneys not appropriated by the general assembly shall remain in the sexual offender monitoring program fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. All moneys in the fund shall be subject to annual appropriation by the general assembly to the department of correction to cover the direct and indirect costs associated with the sexual offender monitoring program.

(b) The department of correction, in coordination with the board of probation and parole is authorized to assess a daily or monthly fee, as the board by regulation deems

reasonable and necessary to effectuate the purposes of this program, from serious and violent sexual offenders who are required by a court, the department, or the board to participate in the sexual offender monitoring program described in § 40-39-202. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system. Fees assessed by the board pursuant to this program shall be collected by the board and deposited in the sexual offender monitoring program fund created in subdivision (a). The provisions of this subdivision shall also apply to any probationer or parolee for violation of a sexually violent offense, as defined in § 40-39-201(d), transferred to the state of Tennessee from another state under the supervision of the interstate compact for the supervision of probationers or parolees, compiled as part 4 of this chapter.

(c) The department, board, or a court may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of such fee. The department, board, or court shall waive only that portion of the surcharge which offender is financially unable to pay.

Section 40-39-206. Notwithstanding any other provision of law, the department of correction, the board of paroles, the Tennessee bureau of investigations, and all local law enforcement agencies are specifically authorized to share criminal incident information (limited to the time, place, and nature of the crime) with each other and the vendor selected by the department to carry out the purposes of this chapter, and the department is authorized to direct the vendor so chosen to use data collected pursuant to § 40-39-202(b) in preparing correlation reports as described in that subsection for distribution to and use by state and local law enforcement agencies.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. The sum of five million dollars (\$5,000,000) is hereby appropriated to the sexual offender monitoring program fund within the state treasury for use by the serious and

violent sexual offender monitoring program for the purposes of implementing the program described herein, consistent with the expenditure designations contained in § 40-39-205.

SECTION 9. This act shall take effect on July 1, 2004, the public welfare requiring it